



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0331]

Hours of Service of Drivers: National Mobile Shower and Catering Association;

Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for an exemption.

SUMMARY: FMCSA announces its decision to grant the National Mobile Shower and Catering Association's (NMSCA) request for an exemption from various provisions of the Federal hours-of-service (HOS) rules for commercial motor vehicle (CMV) drivers. The requested exemption was made on behalf of those drivers employed by NMSCA member companies engaged in the transportation of equipment that provides food and water services to Federally-contracted forest firefighters and similar emergency workers who establish temporary base camps and have immediate need of food and water services near fire scenes. FMCSA analyzed the exemption application and public comments, and determined that the applicant would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and expires October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2018-0331 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The NMSCA seeks the exemption for a group of approximately 30 member companies who are strategically positioned in the Western states. Wildfires occur frequently during certain months of the year, especially in Western states. To fight these fires, the National Forest Service and similar agencies call upon Federally-contracted private fire-fighting companies, who are exempt from the majority of the Federal Motor Carrier Safety Regulations (FMCSRs) [49 CFR 390.3T(f)(5)] when they respond. Upon arriving near the fire scene, the firefighters establish a base camp where they will remain for a period ranging from a few days to a month, and will quickly require food and drinking water. To meet that need, the responsible government agency will issue a “Resource Order” to the nearest mobile shower and catering company that is under contract.

The NMSCA requested an exemption from certain hours-of-service (HOS) regulations for their member companies’ drivers who are responding under a “Resource Order.” A “Resource Order” is a task order issued by a Federal Agency directing firefighters and supporting personnel to respond to forest fires and similar emergencies. NMSCA specifically requested that while operating under a “Resource Order” their drivers and carriers: 1) may extend the 14-hour duty period to no more than 16 hours; 2) need not include “waiting time” while not performing duties in the calculation of the 16-hour period; 3) need not comply with the minimum 30-minute rest break provision; 4) may extend the maximum 60 hours on duty in any 7 days to 80 hours on duty in any 7 days; 5) may extend the 11 hours of driving time to 12 hours, and 6) may extend the “8 days in 30” provision for exemption from use of an electronic logging device to “12 days in 30.”

According to NMSCA, their member companies’ equipment does not qualify for the 49 CFR 390.3T(f)(5) exception for emergency equipment, so, while firefighters respond and set up their base camps, they have little food or water until an NMSCA member’s equipment arrives at

a later time. The exemption is needed both to expedite response to the incident and to allow HOS flexibility for the crews while operating for days at the base camps. While there, the crew members often need to drive CMVs to obtain supplies, in particular, water. Although the crew members have substantial rest time and have sleeping quarters on site, the current HOS regulations may at times hinder their mission support.

A copy of NMSCA's application for exemption is available for review in the docket for this notice.

IV. Public Comments

On November 27, 2018, FMCSA published notice of this application and requested public comment (83 FR 60943). The Agency received 5 comments.

The Advocates for Highway and Auto Safety (Advocates) and the Commercial Vehicle Safety Alliance (CVSA) opposed the exemption request. Excerpts from the Advocates' comments are as follows: "Advocates [strongly] opposes the current petition as it is unnecessary and would substantially degrade public safety... NMSCA has provided no discussion of the regulatory relief presently available to motor carriers during an emergency under 49 CFR 390.23. Furthermore, the only countermeasures discussed by the Applicant indicate that their drivers will have, essentially, taken a short class on the dangers of fatigue and will comply with existing regulations which prohibit driving in a fatigued state. This description falls short of a complete analysis and ignores the underlying reasons for the HOS and electronic logging device (ELD) requirements."

CVSA opposed the exemption request, which it views as both unjustified and impractical. The CVSA believes exemptions from Federal safety regulations have the potential to undermine safety, while also complicating the enforcement process. The FMCSRs and the Hazardous Materials Regulations (HMR) exist to ensure that those operating in the transportation industry

are equipped to do so safely. CVSA added that, if granted, this exemption would place an excessive burden on the enforcement community and negatively impact safety.

The remaining comments were filed by individuals expressing opposition to the NMSCA request. One said: “If NMSCA employees are responding to an emergency much of what they’re requesting is covered by Part 390; therefore, no exemption is required.”

V. FMCSA Decision

FMCSA has evaluated NMSCA’s application and the public comments and decided to grant parts of the request, while denying other parts. Although all comments filed to the docket opposed the exemption, the Agency believes that granting part of the request is appropriate and that the terms and conditions of the exemption will achieve the requisite level of safety.

The Agency believes that allowing drivers to extend the 14-hour duty period in § 395.3(a)(2) to no more than 16 hours would provide an equivalent level of safety because the drivers operating under the exemption would rarely be required to drive up to 11 hours during the work shift. The challenge drivers face when providing support for firefighting crews is that they would occasionally have to operate a CMV after the 14th hour of coming on duty. Driving significantly less than the maximum allowable hours ensures an equivalent level of safety, even when hours behind the wheel occur towards the end of the work shift. Although the exemption does not prohibit individuals from driving up to 11 hours during a work shift, the nature of the firefighting support operations is such that CMV drivers would spend most of their shift in the on-duty, not driving, status.

The Agency believes that providing relief from the 30-minute rest break provision in § 395.3(a)(3)(ii) would achieve an equivalent level of safety because the drivers in question take numerous breaks during their work shift, and spend most of their time in the on-duty, not

driving, status. While the breaks from the driving tasks are not off-duty breaks, the absence of long periods of continuous driving minimizes the risks of individuals operating while fatigued.

With regard to relief from electronic records of duty status (RODS), the Agency notes that the existing regulations allow motor carriers and drivers to avoid the use of electronic logging devices (ELDs) if their operations do not require RODS more than 8 days in a 30-day period, which may be the case for short-haul operations under § 395.1(e)(1). NMSCA drivers would continue to comply with the driving time limits and the requirement to maintain accurate RODS and supporting documents which could be used to verify compliance with the terms and conditions of the exemption. The exemption would provide up to four additional days of relief from the ELD requirement (12 days instead of 8) during a 30-day period.

Because the relief is applicable only when the NMSCA member companies are operating under a “Resource Order” or other comparable order issued by a Federal government agency, relief from the ELD rule would not be continuous throughout the year, and the retention of paper RODS and supporting documents during these periods for the limited number of NMSCA members provides an effective alternative for verifying compliance with terms and conditions of the exemption and the applicable hours of service requirements.

Finally, the requirement that drivers have 24 consecutive hours off-duty at the completion of camp activities/demobilization before driving a CMV in operations not covered by the exemption, combined with North American Fatigue Management Program (NAFMP) training, ensures the individuals understand the importance of obtaining an adequate amount of rest, even under difficult operating conditions, and that they have the opportunity for rest when the firefighting support activities have ended.

FMCSA notes that NMSCA has not notified the Agency of any reportable accidents while operating under the terms and conditions 2018 HOS waiver. With the imposed terms and conditions, the Agency believes that NMSCA drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)].

FMCSA denies NMSCA's request to allow "waiting time" to extend the window during which driving of CMVs is allowed because the Agency does not believe such relief would achieve an equivalent level of safety. While such relief was provided in the 2018 waiver, the waiver was limited to no more than 90 days to accommodate the urgency of the 2018 firefighting season. In the context of an exemption, the Agency does not believe the relief is appropriate because the frequency and time span of its possible use increase the risk of unsafe operations. As such, the Agency does not believe an exemption that excludes waiting time from the calculations of the driving time window would provide an equivalent level of safety.

FMCSA also denies NMSCA's request to extend the weekly limits for on-duty time. Currently, the Agency's regulations prohibit driving a CMV after a driver accumulates 60 hours of on-duty time within seven consecutive days (60-hour rule). Drivers may restart the calculations of the 60-hour rule at any time they have 34 consecutive hours off-duty. NMSCA requested that the Agency allow drivers up to 80 hours of on-duty time within seven consecutive days before the driver would be prohibited from operating CMVs. The Agency is not aware of any information that would support such an increase in the amount of on-duty time before the driver would be required to have at least 34 consecutive hours off-duty. The increase would significantly increase the risk of drivers with cumulative fatigue operating CMVs on public roads.

VI. Terms and Conditions for the Exemption

This exemption is restricted to CMV drivers employed by NMSCA members transporting equipment to provide food and water services to contracted firefighters at designated base camps as follows:

(1) The exemption is in effect only for periods of time when NMSCA members are operating under a “Resource Order” or other comparable order issued by a Federal government agency.

(2) Drivers operating under the exemption must be employed by the NMSCA companies listed in the attachment to this letter.

(3) Drivers must provide proof that they are operating for one of the designated NMSCA member companies, and must produce a copy of the relevant Resource Order, or other comparable order, upon request of law enforcement officers.

(4) When operating under this exemption, drivers and carriers:

- a. May extend the 14-hour duty period in § 395.3(a)(2) to no more than 16 hours;
- b. Need not comply with the minimum 30-minute rest break provision in § 395.3(a)(3)(ii);
- c. May extend the “8 days in 30” provision in § 395.8(a)(1)(iii)(A)(1) to “12 days in 30”;

(5) Drivers must have at least 24 consecutive hours off-duty at the completion of camp activities/demobilization before driving a commercial motor vehicle.

(6) Drivers must complete the Driver Education Module 3 and the Driver Sleep Disorders and Management Module 8 of the North American Fatigue Management Program (NAFMP) (www.nafmp.org) prior to operating under the exemption; and

(7) Motor carriers and drivers must comply with all other provisions of the Federal Motor Carrier Safety Regulations.

This exemption is contingent upon each carrier maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must be in possession of the exemption document and, if required, maintain a valid commercial driver’s license with required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Preemption

In accordance with 49 U.S.C.31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, each member company listed in the attachment of this letter must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Identifier of the Exemption: “NMSCA,”
- b. Name of operating carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and license number,

- f. Co-driver's name (if any) and license number
- g. Vehicle number and state license number,
- h. Number of individuals suffering physical injury,
- i. Number of fatalities,
- j. The police-reported cause of the accident,
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- l. The total driving time and total on-duty time prior to the accident.

VIII. Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: September 25, 2019.

Raymond P. Martinez,

Administrator.

Emergency		
Mobile Kitchen Members		
COMPANY NAME	DOT #	ADDRESS
Big Sky Mobile Catering	362431	224 N Higgins Ave., Missoula, MT 59802
Bishop Services	393418	PO Box 11 Goldendale, WA 98620
Cattlemen's Meat Company	0689015	12 East Main Street Cut Bank, MT 59427
D.F. Zee's Firefighter Catering	767697	987 Kruse Way Springfield, OR 97477
For Stars Express	1023332	13124 Firestone Blvd Santa Fe Springs, CA 90670
Houston's Too	1262159	20645 North 28th Street Phoenix, AZ 85050
OK'S Cascade Company, LLC	291137	1429 Avenue D, #166, Snohomish, WA 98290
Latitude Catering (R&G Food Service)	683431	4650 S. Coach Dr. Ste.110, Tucson, AZ 85714
North Slope Catering	1123123	322 Culver Blvd. #352 Playa Del Rey, CA 90293
NuWay Inc.	340104	955 N. 4th St Lander, WY 82520
Ridgeline Support Services	1262159	20645 North 28th Street Phoenix, AZ 85050
Scofield Catering and Management, Inc.	1904003	5450 Ralston St. Suite 104 Ventura, CA 93003
Stewart's Firefighter Food Catering, Inc.	443962	P O Box 818 Redmond, OR 97756
The Lake, Inc.	2408174	9716 Pyramid Highway Sparks, NV 89441
Thunder Mountain Catering, Inc	1764298	5143 N Northwall Ave Boise, ID 83703
Yellowstone Kelly's Catering	429821	PO Box 80484 Billings, MT 59108
Emergency Mobile Shower Members		
A-1 Services PWMSGW	1744502	P.O. Box 189 Oak City, UT 84649
A-1 Water	1745328	PO Box 1552 Goleta, CA 93116
AAA Mobile Showers	2494204	PO Box 4528 Visalia, CA 93278
Action Sanitary, Inc	906447	PO Box 492 Lower Lake, CA 95457
Alan & Daryl's Vacuum Truck Service, LLC	886981	P.O. Box 189 Oak City, UT 84649
B & D Mobile Support Inc.	1851540	11030 Hwy 39 Klamath Falls, OR 97603
Backcountry Support Systems	2881759	3011 Jackson Road Carter, Montana
Big Sky Showers	1750986	224 N Higgins Ave Missoula, MT 59802
Bishop Services, Inc.	393418	P O Box 11 Goldendale, WA 98620
Bush Fire Services	875731	305 Flat Lick Road London, KY
El Dorado Water & Showers	789755	P O Box 944 Placerville, CA 95667
NuWay, Inc.	340104	955 N 4th Street Lander, WY 82520
Ports on Site Services	1379095	305 Flat Lick Road London, KY
Western Emergency Services	339360	PO Box 838 Merlin, OR 97532